

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

FAMILY WATCHDOG, LLC

Plaintiff,

v.

Case No. 1:08-CV-642-SEB-DML

LESTER SCHWEISS, SAHRA SCHWEISS,  
INNOVATES, INC., KEY-SYSTEMS GmbH  
d/b/a Domaindiscount24.com, THE NATIONAL  
ALERT REGISTRY, INC., and CYBERSPACE  
TO PARADISE, INC.,

Defendants.

**MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT  
FOR LACK OF JURISDICTION OVER DEFENDANTS LESTER  
SCHWEISS, SAHRA SCHWEISS & INNOVATES, INC.**

Defendants Lester Schweiss, Sahra Schweiss<sup>1</sup>, and Innovates, Inc.<sup>2</sup>, by and through their counsel, respectfully move this Court to dismiss Plaintiff's *First Amended Verified Complaint for Injunctive Relief and Damages* pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure on the basis that this Court lacks jurisdiction over these Defendants.<sup>3</sup>

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<sup>1</sup> Plaintiff has already consented to the dismissal without prejudice of Sahra Schweiss due to the lack of evidence to support this Court's exercise of jurisdiction over her. (Plaintiff's Response and Brief to Defendant's Motion to Dismiss, pg. 5, n. 4). Without waiving any arguments to have Sahra Schweiss dismissed from this lawsuit, Defendants' Motion and Memorandum will proceed as if the issue of jurisdiction as to her has not been rendered moot.

<sup>2</sup> The record indicates that Innovates, Inc. was administratively dissolved by the Wyoming Secretary of State in 2004 and has never been reinstated in any jurisdiction. This dissolution occurred well before any of Plaintiff's causes of action arose.

<sup>3</sup> Plaintiff's First Amended Complaint presents no substantive changes to the facts or allegations involving Defendants as set forth in Plaintiff's original Complaint. However, Defendants are filing this Motion to Dismiss and Memorandum in Support in the event that this Court deems such filing procedurally necessary. Defendants do not waive any of the arguments presented in their original motion to dismiss and memorandum in support filed on June 5, 2008, nor do they waive any arguments set forth in their reply memorandum filed on August 26, 2008.

As explained more fully in the accompanying *Memorandum in Support of Defendants' Motion to Dismiss Plaintiff's First Amended Complaint for Lack of Jurisdiction Over Defendants Lester Schweiss, Sahra Schweiss & Innovates, Inc.*, this Court lacks jurisdiction for the following reasons:

1. Defendants Lester Schweiss and Sahra Schweiss are residents of Bridgeton, Missouri and have never been residents of Indiana.
2. Defendant Innovates, Inc. is an administratively dissolved Wyoming corporation of which Defendant Lester Schweiss was President until its dissolution in 2004.
3. Defendants have never transacted any business within the State of Indiana, nor have Defendants solicited business from residents of Indiana.
4. Defendants have never sold or shipped any products into the State of Indiana, nor have Defendants disseminated any print, television, or radio advertisements within the State of Indiana or to the residents of Indiana.
5. Defendant Lester Schweiss' websites have never specifically targeted residents of Indiana, nor have residents of Indiana ever been able to transact business, form contracts, or purchase products or services directly through the websites.
6. Defendants have never owned any property in Indiana and have never had any offices located in Indiana
7. Defendants are filing their Memorandum in Support and Affidavits supporting these facts contemporaneously with this Motion.

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Furthermore, Defendants do not waive their right to contest and respond to the allegations set forth in Plaintiff's sur-reply filed November 12, 2008 should the Court decide to consider it. Besides being procedurally deficient in that Plaintiff filed the sur-reply subsequent to filing its First Amended Complaint, Defendant noted in its Motion to Suspend the cancellation action pending before the Trademark Trial and Appeal Board (TTAB) that a Motion to Dismiss was pending in regard to this civil action. Exhibit A to Plaintiff's Sur-Reply, ¶ 4. Should this Court find in favor of Defendants on the jurisdiction issue, Plaintiff will have every opportunity to request that the TTAB remove the cancellation action from suspension.

WHEREFORE, Defendants pray that this Court grant Defendants' Motion to Dismiss Plaintiff's *First Amended Verified Complaint for Injunctive Relief and Damages* pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure and award Defendants their reasonable costs and attorneys' fees incurred in bringing forth this Motion and prior motions, and for any and all other just and appropriate relief.

Respectfully submitted,

HELLER & ASSOCIATES *Counsel for Lester Schweiss, Sahra Schweiss, and Innovates, Inc.*

By: /s/ Annette P. Heller  
Annette P. Heller (Admitted *Pro Hac Vice*)  
Morris E. Turek (Admitted *Pro Hac Vice*)  
14323 S. Outer Forty Dr., Suite 512 S  
Town & Country, MO 63017  
Tel: (314) 469-2610  
Fax: (314) 469-4850  
[tmattorneyheller@aol.com](mailto:tmattorneyheller@aol.com)  
[tmattorneyturek@aol.com](mailto:tmattorneyturek@aol.com)

DANN PECAR NEWMAN & KLEIMAN,  
Professional Corporation  
Andrielle M. Metzel, #19481-49  
*Appearing as Local Counsel for Lester Schweiss, Sahra Schweiss and Innovates, Inc.*

One American Square Suite 2300  
Indianapolis, IN 46282  
Tel: (317) 632-3232  
Fax: (317) 632-2962  
[ametzeldannpecar.com](mailto:ametzeldannpecar.com)

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that a copy of the foregoing is being electronically filed via the Court's electronic filing system on November 21, 2008 and that notice hereof will automatically be sent by the Court's filing system to all counsel of record participating in electronic filing.

/s/ Annette P. Heller